

SERVICE DATE - AUGUST 4, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-254 (Sub-No. 7X)

PROVIDENCE AND WORCESTER RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN WORCESTER COUNTY, MA, AND WINDHAM COUNTY, CT

Decided: August 3, 2004

Providence and Worcester Railroad Company (P&W) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a portion of its line of railroad known as the Southbridge Running Track, extending from milepost 0.18, in Webster, MA, to milepost 10.98, in Southbridge, MA, a distance of approximately 10.8 miles, in Worcester County, MA, and Windham County, CT. Notice of the exemption was served and published in the Federal Register on November 4, 2003 (68 FR 62497-98). By decision and notice of interim trail use or abandonment (NITU) served on December 3, 2003,¹ the proceeding was reopened and a 180-day period was authorized for the Commonwealth of Massachusetts, by and through its Executive Office of Transportation and Construction (EOTC), to negotiate an interim trail use/rail banking agreement with P&W for the portion of the right-of-way between milepost 0.18, in Webster, and milepost 1.4 +/-, in Dudley, and between milepost 4.8 +/-, in Dudley, and milepost 10.98, in Southbridge, MA, under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). At the request of EOTC, the negotiating period was extended by decision served on June 1, 2004. The negotiating period was due to expire on July 31, 2004, but, by facsimile filed on July 30, 2004, P&W and EOTC jointly requested an extension of the negotiating period until August 9, 2004. P&W and EOTC state that the parties were unable to complete negotiation by July 31, 2004, and that an extension of time is necessary to finalize those negotiations.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations by joining in the request for an extension, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended until August 9, 2004, for the portion of the line described above.

¹ The December 3, 2003 decision also imposed a public use condition, which expired on June 1, 2004, and several environmental conditions, which remain in effect.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request to extend the NITU negotiating period until August 9, 2004, for the portion of the line described above, is granted.
2. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary